

Persons who provide satellite television services, including basic network channels, premium channels, pay per view movies, sporting events, etc., are generally not subject to the Telecommunications Excise Tax liability. See 35 ILCS 630/1 et. seq. (This is a GIL.)

November 1, 2004

Dear Sir or Madam:

This letter is in response to your letter dated June 3, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC will be conducting business in the month of April. We request that you respond with a Ruling on the information requested below.

We are requesting a ruling on to determine if we need to register for sales tax and use tax. ABC will provide Satellite TV and internet access to residents of the CITY.

STATEMENT OF FACTS

Overview

ABC is planning to offer SATV & High Speed internet services to subscribers located in your state. By allowing ABC to offer this service, it will allow viewers to do the following:

1. Automatically record television shows and watch them at a later time.
2. Create personalized programming based upon the viewer's previous viewing patterns.
3. Receive special data and video content at a faster speed than a Dial up network.

In order for a subscriber to obtain this service, a subscriber must purchase or have access to the following:

1. Digital Receiver (3750 QAM Receiver) for SATV
2. Cable Modem for High Speed Data Services
3. A current paid subscription to ABC's SATV service.

Operational Aspects

In order for a subscriber to subscribe to SATV service, the subscriber must first purchase Cable Ready TV or HDTV. Cable Ready TV or HDTV are available for purchase through unrelated third party retailers and consist of a set-top unit and remote control. It is our understanding that sales tax on the units is collected by retailers at the point of sale, where applicable. The manufacture and sale of said items have been licensed to independent third-party consumer electronics manufacturers. Please note,

These capabilities exist independently of the personal SATV service provided by ABC.

As noted above, we will offer enhancements to the internet to customers interested in subscribing to High Speed Data Services. However, customers are not obligated to subscribe to our service. In order for a subscriber to receive our services, the subscriber must pay a monthly subscription fee directly to ABC. This fee is distinct from any fee paid for SATV cable programming services.

In consideration of the subscription fees, our company will provide the following services:

1. Program Guides --The program guides are delivered electronically on a nightly basis. The Programming Guide also contains program information that allows the subscriber review starts and end times of local programming.

Future Services and Revenue

In the future, ABC may provide enhanced services via modem, digital subscriber line (DSL), satellite or other high-speed connection.

In addition, our client may receive additional revenues from the following:

1. Targeted advertising
2. Promotional content programming.
3. Select and purchase products promoted in specialized programming.
4. Delivery of premium programming such as music, games, and motion pictures ordered by a subscriber and delivered to their home.

Billing Procedures

Subscriber's can subscribe to ABC's SATV service in the following ways:

1. Customers may contact ABC via a toll free number.
2. The World Wide Web at _____

ISSUES

1. What is your state's sales & use, telecommunications, and/or other gross receipts tax treatment of ABC's SATV services to customers located in your state as described in the statement of facts as presented?
2. Billing to the customer may be presented in one line item in the finished invoice. In some instances, customers may only have access to an electronic invoice via the internet. Will this billing approach make any difference to the taxability of our client's service?
3. When personal television services are provided by a direct-to-home satellite provider, are the fees collected from subscribers exempt from local taxation under section 602 of the Federal Telecommunications Act?
4. Are there any other state and/or local taxes which may apply to ABC?

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. If your company makes retail sales of promotional items, then Retailers' Occupation Tax and Use Tax liability would be incurred on the tangible personal property sold.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Television programming or other services in which no tangible personal property is transferred are not subject to Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, and Service Use Tax liability. For general information regarding sales of service and Service Occupation Tax, see 86 Ill. Adm. Code 140.

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. For additional information regarding telecommunications tax liabilities, please refer to 86 Ill. Adm. Code 495.100 et al. In addition, please refer to the Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1 et seq.

For additional information regarding the tax liability of satellite television services, network channels, premium channels and pay per view movies, etc., please see general information letter ST 02-0004-GIL which may be found among the Department's sales tax "Sunshine Letters" on the Department's internet website. If your company engages in the retail sale of software to access said services, Retailers' Occupation Tax liability may be incurred.

The transfer of canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability.

Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be taxable.

Should your company charge its customers for transmission and telephone line charges, then the above-mentioned telecommunications taxes would apply. Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. If such charges are not separately stated in this manner, then all charges are taxable

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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